

Wang (Migration) [2017] AATA 2060 (26 October 2017)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Miss Rui Wang Mr Peng Yue
CASE NUMBER:	1615582
DIBP REFERENCE(S):	BCC2016/1174393
MEMBER:	Margie Bourke
DATE:	26 October 2017
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision to cancel the first named applicant's Subclass 801 (Spouse) visa. The Tribunal affirms the decision to cancel the second named applicant's Subclass 820 (Partner) visa.

Statement made on 26 October 2017 at 4:02pm

CATCHWORDS

Migration – Cancellation – Partner (Residence) (Class BS) – Subclass 801 (Spouse) visa – Subclass 820 (Partner) – Incorrect information to obtain a grant of visa

LEGISLATION

Migration Act 1958, ss 107, 109, 140,
Migration Regulations 1994, r 1.09A, r 2.03A, r 2.41,

CASES

MIAC v Khadgi (2010) 190 FCR 248.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to cancel the first named applicant's Subclass 801 (Spouse) visa under s.109(1) of the *Migration Act 1958* (the Act).
2. The delegate cancelled the visa on the basis that the applicant Ms Wang provided incorrect answers in the application for the Combined Partner (subclass 820 / 801) visa lodged 2 October 2012 in which the applicant is listed as a dependent child. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
3. For the purposes of the tribunal's jurisdiction, there are two decisions before the tribunal; the first is that with respect to the first named applicant Ms Wang, (the applicant) in relation to the decision to cancel the visa. The second decision relates to the other visa of Mr Yue which was cancelled as a consequence of that cancellation, by a discretionary decision pursuant to s.140(2) of the Act.
4. The matter was listed for hearing on 13 December 2016. Subsequently the matter was reconstituted to me as the previous member who heard the review on 13 December 2016 was no longer available. I determined the most appropriate course was to offer the applicants another hearing.
5. The first named review applicant Ms Wang appeared before the tribunal on 18 September 2017 to give evidence and present arguments. The tribunal also received oral evidence from Ms Ying. The tribunal invited the second named review applicant Mr Yue to attend the hearing but he did not attend. The tribunal did not contact Mr Yue on the telephone number provided at the hearing on 18 September 2017, and subsequently invited Mr Yue to attend a further hearing on 26 October 2017. The tribunal heard evidence from Mr Yue via telephone on 26 October 2017, and some additional evidence from Ms Wang and Ms Ying. The tribunal hearings were conducted with the assistance of an interpreter in the Mandarin and English languages.
6. For the following reasons, the tribunal has concluded that the decision to cancel the applicants' visas should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The first issue to be considered in this review is the decision to cancel Ms Wang's visa pursuant to s.109 of the Act.
8. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss.101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.
9. The exercise of the cancellation power under s.109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s.107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s.107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.

10. In the present matter, the tribunal is satisfied that the delegate had reached the necessary state of mind to engage s.107 and that the notice issued under s.107 complied with the statutory requirements.

WAS THERE NON-COMPLIANCE AS DESCRIBED IN THE S.107 NOTICE?

11. The issue before the tribunal is whether there was non-compliance in the way described in the s.107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified in the s.107 notice was non-compliance with s.101(b) of the Act which requires that an applicant must fill in her visa application form in such a way that no incorrect answers are given. The notice particularised the non-compliance in the following respects: at Q38 the first named review applicant recorded her relationship status as "*never married or been in a de facto relationship*" and the first named review applicant signed the application form at Q95 and declared the information provided in the application form is complete, correct and up-to-date in every detail.
12. The first named review applicant sponsored Mr Yue in a Combined Partner (Subclass 820 / 801) visa application which was lodged on 11 May 2015. In the application the first named review applicant Ms Wang, and Mr Yue both recorded their relationship status as "de facto", and that their de facto relationship commenced on 21 July 2011. They both recorded that the date they committed to the de facto relationship was 21 July 2011, the date they met was 22 February 2009, the date that they committed to a shared life together to the exclusion of all others was 21 July 2011, and that they had not lived separately and apart for any periods of time since they committed to a shared life together to the exclusion of all others. The first named review applicant, Ms Wang and Mr Yue signed the application and sponsorship forms and declared that they had read and understood the information provided to them in the application, and that they had provided complete and correct information in the application form and in the attachments. The first named review applicant Ms Wang provided a statement dated 6 May 2015 confirming the de facto relationship commenced four years ago; Mr Yue provided a statement dated 6 May 2015 confirming their de facto relationship commenced on 21 July 2011. The application had further attachments including a joint tenancy agreement dated 21 September 2011 and a bond receipt dated 3 October 2011 in both Ms Wang's and Mr Yue's names. The information provided to the Department by the first named review applicant was itemised and recorded in the Department's decision record dated 15 September 2016, a copy of which was provided by the first named review applicant to the tribunal with the application for review.
13. The information identified and particularised in the notice indicates that the first named review applicant Ms Wang and Mr Yue were in a de facto relationship from 21 July 2011. If this is the case, at the time the first named review applicant applied for the visa which was lodged on 2 October 2012 and the first named review applicant recorded she had "*never married or been in a de facto relationship*", she provided an incorrect answer on the application.
14. The first named review applicant, through her representative, provided a response dated 29 August 2016, submitting she misunderstood the criteria for de facto relationship, and that the parties had shared a household but were reliant on others for financial support so they were not in a de facto relationship in 2011. The submission stated the parties were in a relationship; but the relationship could not be characterised as a de facto relationship. The representative also provided submissions addressing r.2.41 factors.
15. In the Department's decision record dated 15 September 2016, the delegate found that the first named review applicant Ms Wang had provided incorrect information about her relationship status.

16. The first named review applicant submitted that she was not in a de facto relationship with Mr Yue at the time she was included as a dependent child in her mother's visa application which was lodged on 2 October 2012. Ms Wang stated she was in a girlfriend / boyfriend relationship with Mr Yue from July 2011. Ms Wang stated she was aged 19 years at the time. She and Mr Yue lived as house mates or room mates in July 2011. She stated she felt safer with a male house mate. She stated they had occupied separate bedrooms, but had also had started to share an intimate boyfriend/girlfriend relationship. She stated they were financially dependent on their families, and were financially independent from each other.
17. The first named review applicant Ms Wang stated that when she and Mr Yue decided to apply for the Partner Subclass 801 / 820 visa, they provided their agent with the history of their relationship, which included that they had shared the apartment since July 2011. Ms Wang stated that she mistakenly thought they had been in de facto relationship from July 2011. She stated her representative in their partner application also mistakenly thought that they were in a de facto relationship from July 2011.
18. The first named review applicant stated that in 2012, Mr Yue was just her boyfriend. She stated her answer in October 2012 that she had never been married or in a de facto relationship was correct. She stated she thought her answers in both applications were correct.
19. The first named review applicant stated that in her culture de facto relationships are not protected. The witness Ms Ying submitted in a statutory declaration dated 16 September 2017 that the Australian legal definition of de facto relationships are not recognised in Chinese culture. I have considered these submissions. I have considered that the answer required in the application form is not a complex one; it is not enquiring about cultural values or legal definitions, but the applicant's relationship status. I am satisfied that the answer in the application form lodged 2 October 2012 does not require knowledge of the legal definition of de facto relationship. The Q38 required the applicant to disclose if she currently was or had been married or had a de facto partner.
20. Ms Ying told the tribunal that she acted for Mr Yue in the partner application. She provided a statutory declaration in which she declares that the date of the commencement of the de facto relationship of July 2011 was based on a misunderstanding between Mr Yue, Ms Wang and herself. She declares she requested her client provide documents to support the de facto partner visa application in 2015, and the documents provided included the joint tenancy agreement dated September 2011.
21. In her declaration Ms Ying declares that Mr Yue and Ms Wang instructed subsequently (after the cancellation notice), that they commenced sharing a bedroom in February 2012, which is not 12 months before 2 October 2012 when the application was lodged. Ms Ying declares the parties would not meet the threshold test of r.2.03A for a de facto relationship at the time the applicant declares she has never been in a de facto relationship. Ms Ying submits that the first named review applicant is therefore correct when she recorded in October 2012 that she had never been in a de facto relationship. As r.2.03A(3) requires the de facto relationship to have been in existence for 12 months immediately before the time of application, (and this requirement can be waived), the tribunal does not accept the submission that not meeting the r.2.03A(3) requirement of the relationship existing for 12 months means an applicant is not in a de facto relationship at all. The application form that Ms Wang provided in 2 October 2012 did not require an answer as to whether Ms Wang met the requirements of r.2.03A at 2 October 2012. I am assessing whether the information Ms Wang provided on 2 October 2012 that she had "*never married or been in a de facto relationship*" was correct. I am not required to assess how long the de facto relationship, if there was one, had existed. I am assessing whether the answer provided by Ms Wang that she had never been in a de facto relationship was correct information.

22. Ms Ying further submits that Ms Wang and Mr Yue relied on their parents for financial support and did not commit to each other by opening a joint bank account until July 2014. The tribunal accepts that one of the factors to be considered by a decision maker pursuant to r.1.09A(3) in relation to the circumstances of a relationship, is the financial aspects of the relationship, but these do not impose mandatory requirements for a relationship. A decision maker would not necessarily find an applicant does not meet the requirements of a de facto relationship because when considering the financial aspects of the relationship the parties received assistance from their parents, or did not operate a joint account.
23. I have considered that Ms Ying stated that she completed the application and all the forms on the instructions of her clients, and that the first named review applicant Ms Wang and Mr Yue read and signed the documents that were submitted.
24. Mr Yue told the tribunal that he and Ms Wang never intended to provide incorrect or misleading information. He stated all the documents they provided in support of his partner application were correct. Mr Yue stated that at the beginning of the university semester in 2012, approximately February or March, they shared their two bedroom apartment with another student. He stated from this time he and Ms Wang shared one bedroom in the apartment on a permanent basis, and the flat mate had the other bedroom. Mr Yue stated it was normal for people in a boyfriend/girlfriend relationship to have a sexual relationship. Mr Yue stated that both he and Ms Wang were financially dependent on their parents. Mr Yue stated that they did not introduce each other to each other's parents at the very beginning of their relationship which was 2009, but did subsequently. He stated he did not know what exclusive commitment meant, although it was interpreted for him through the Mandarin interpreter. Mr Yue agreed he had signed a declaration in the application for the partner visa and recorded the date of 21 July 2011 that he committed to a shared life with Ms Wang to the exclusion of all others.
25. I have considered the evidence of Mr Yue, in which he stated that in the year 2012 he lived with Ms Wang, they shared an apartment and shared their bedroom, their families knew of their relationship, and they provided documents confirming that they shared the property together.
26. At the second hearing, Ms Wang confirmed her evidence from the previous hearing, and elaborated that she shared a bedroom with Mr Yue from early 2012 and that they had a flat mate in the other room. She stated the other person lived in the other room. I am satisfied based on the evidence of Ms Wang, Mr Yue and Ms Ying that the parties lived together, shared an apartment in their names and were known to be in a relationship by their families.
27. I have carefully considered the written and oral evidence of Ms Ying and the written and oral evidence of Ms Wang and Mr Yue. I am satisfied that on 2 October 2012 the first named review applicant recorded an answer that she had never married or been in a de facto relationship. She declared in the form that records this answer that all the information was complete and correct. At this time the first named review applicant had been sharing a house for 14 months with Mr Yue and sharing a bedroom with him in that house for at least eight months. In 2015 the first named review applicant declares on the sponsorship forms that she has been in a de facto relationship with Mr Yue since 21 July 2011. She provided a statement confirming her de facto relationship with Mr Yue had existed for four years. Her representative stated to the tribunal that all documents and information provided in support of the 2015 application were done on the instructions of Mr Yue and Ms Wang.
28. I do not accept Ms Wang's evidence that the information she has provided on the application form in 2 October 2012 is correct. I am satisfied that at the time the first named review applicant recorded she had "*never married or been in a de facto relationship*", she was in a de facto relationship with Mr Yue. I do not accept Ms Wang's evidence that she was

mistaken as to what de facto relationship meant in relation to the information provided on 11 May 2015. I do not accept Mr Yue's evidence that he did not understand what was meant by de facto relationship, or the word "exclusion". I am satisfied, based on my analysis of the written and oral evidence of Ms Wang and Mr Yue that they were aware of the nature of their relationship on 2 October 2012, at the time Ms Wang recorded her answer in the application form that she had "*never married or been in a de facto relationship*".

29. I have considered the evidence of the circumstances of the relationship, including evidence of the financial aspects of the relationship, the social aspects of the relationship, the nature of the parties' household and the nature of the parties' commitment to each other. This evidence includes, but is not limited to the following evidence, that is relevant to the correctness of the answer provided by Ms Wang as to her relationship status on 2 October 2012. I am satisfied that Ms Wang and Mr Yue moved into a shared apartment together in July 2011, and I accept the shared tenancy document is evidence of this. I am satisfied that Ms Wang resided with Mr Yue from 21 July 2011, and they lived together and not separately and apart on a permanent basis from 21 July 2011. I am satisfied that Ms Wang and Mr Yue shared and managed a household together from 21 July 2011, and the shared tenancy document and the sponsorship and application forms and statements of relationship provided in May 2015 are evidence of this. I am satisfied based on the evidence of the applicants and the witness in relation to the intimacy of the relationship and the shared bedroom from at least February 2012 that the parties did not reside together as housemates. I am satisfied that Ms Wang and Mr Yue made a commitment to each other to a shared life to the exclusion of all others as they recorded in their application for the partner visa in May 2015. I am satisfied that Ms Wang and Mr Yue were accepted by family as being in a de facto relationship, and represented themselves as being in a de facto relationship from July 2011 when they commenced living together. I am satisfied the financial support from their parents when they lived together is evidence their respective families recognised the relationship and supported the couple. I am satisfied that Ms Wang and Mr Yue were students in July 2011, and for some time after that date and relied on their parents for some financial support. I am satisfied that although they were not financially independent from their parents, that Ms Wang and Mr Yue were in a genuine and continuing relationship. I have considered all the evidence before me, and give significant weight to the statements of relationship made by Ms Wang and Mr Yue dated 6 May 2015, and the information recorded by the applicants in the application for the Subclass 820 Partner visa lodged on 11 May 2015.
30. I am satisfied that Ms Wang and Mr Yue were in a genuine and continuing relationship, and had a mutual commitment to a shared relationship to the exclusion of all others, and lived together, and not separately and apart, on a permanent basis, at the time Ms Wang declared on 2 October 2012 that she had never been in a de facto relationship. I am satisfied that there has been non-compliance with s.101(b) of the Act, as identified and particularised in the s.107 notice.
31. For these reasons, the tribunal finds that there was non-compliance with s.101(b) by the first named review applicant in the way described in the s.107 notice.

32.

SHOULD THE VISAS BE CANCELLED?

33. As the tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s.107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s.109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s.109(2).

34. In exercising this power, the tribunal must consider the review applicants' response (if any) to the s.107 notice about the non-compliance, and have regard to any prescribed circumstances: s.109(1)(b) and (c). The prescribed circumstances are set out in r.2.41 of the Regulations. Briefly, they are:

- **THE CORRECT INFORMATION**
- **THE CONTENT OF THE GENUINE DOCUMENT (IF ANY)**
- **WHETHER THE DECISION TO GRANT A VISA OR IMMIGRATION CLEAR THE VISA HOLDER WAS BASED, WHOLLY OR PARTLY, ON INCORRECT INFORMATION OR A BOGUS DOCUMENT**
- **THE CIRCUMSTANCES IN WHICH THE NON-COMPLIANCE OCCURRED**
- **THE PRESENT CIRCUMSTANCES OF THE VISA HOLDER**
- **THE SUBSEQUENT BEHAVIOUR OF THE VISA HOLDER CONCERNING HIS OR HER OBLIGATIONS UNDER SUBDIVISION C OF DIVISION 3 OF PART 2 OF THE ACT**
- **ANY OTHER INSTANCES OF NON-COMPLIANCE BY THE VISA HOLDER KNOWN TO THE MINISTER**
- **THE TIME THAT HAS ELAPSED SINCE THE NON-COMPLIANCE**
- **ANY BREACHES OF THE LAW SINCE THE NON-COMPLIANCE AND THE SERIOUSNESS OF THOSE BREACHES**
- **ANY CONTRIBUTION MADE BY THE HOLDER TO THE COMMUNITY.**

35.

36. Ms Wang

37. I have considered the first named review applicant's representative's submissions dated 29 August 2016, the written evidence provided by the first named review applicant and her evidence at the hearings on 18 September 2017 and 26 October 2017, and the evidence of Mr Yue.

38. (a) *Correct information*: the correct information related to the applicant Ms Wang' relationship status. I am satisfied that the correct information that Ms Wang was in a de facto relationship with Mr Yue and that this information was known to Ms Wang at the time she recorded that she had "*never married or been in a de facto relationship*".

39. (b) *Genuine document*: does not apply, and I give this no weight.

40. (c) *Whether the decision to grant the visa was based wholly or partly on the incorrect information*: Ms Wang applied for the visa as a dependent child. She would not have met the criteria in r.1.03 for dependent child if she was in a de facto relationship. She would not have been entitled to the grant of the visa if the correct information had been provided in the application.

41. (d) *Circumstances of non-compliance*: Ms Wang was aged 19 years at the time the incorrect information was provided, and although applying as a dependent child she was therefore an

adult at the time, and was assisted by her mother in the application. The incorrect information appears to have been provided to obtain the grant of a visa to which the first named review applicant was not entitled.

42. (e) *Present circumstances*: Ms Wang stated she ran an import / export business with Mr Yue and Mr Zeng which operates in Australia and China. Mr Yue is currently in China in relation to this business. The three of them run the business, and they have no employees. She stated her parents separated when she was two years old, and she was brought up by her mother. She stated she has been in Australia since she was 16 years of age, and has no close relationships with her father or relatives in China. Ms Wang stated her mother lived in Australia and had suffered some injuries in a motor vehicle accident in 2013. I have given some weight in her favour to the first named review applicant's connection with her mother and her business in Australia.
43. (f) *Subsequent behaviour*: There is no evidence of any issue in relation to the first named review applicant Ms Wang not responding or cooperating with the Department. I give this some weight in her favour.
44. (g) *Other non-compliance*: There is no evidence of any other instance of non-compliance, and I give this some weight in the first named review applicant's favour.
45. (h) *Time since non-compliance*: it is nearly five years since the non-compliance. I note this period and the first named review applicant's age, and give this some weight in the first named review applicant's favour.
46. (i) *Breaches of law*: there is no evidence of any breaches of the law by the first named review applicant and I give this some weight in the first named review applicant's favour.
47. (j) *Contribution to the Community*: the applicant stated she had sometimes made donations by door to door sales or requests. She had no evidence of these donations, and or the amounts involved or the dates. I am not satisfied that there is any contribution to the community made by the first named review applicant that is relevant to this review, and I give this factor no weight.
48. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedural Advice Manual) PAM3 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.
49. I have considered the correct information and the fact the first named review applicant would not have been entitled to the grant of the visa if the correct information had been provided. I have balanced this with consideration of the other circumstances I am required to consider when determining whether the visa should be cancelled as outlined above.
50. I have also considered that the consequences of the cancellation could result in the cancellation of Mr Yue's partner visa. I have considered this may cause hardship to Mr Yue and Ms Wang. I give this some weight in the first named review applicant's favour.
51. I have considered that although Ms Wang applied as a dependent child, she was aged 19 years at the time of application and therefore the cancellation would not bring into play Australia's obligations under the UNHCR Convention on the Rights of the Child. I am satisfied that the cancellation would not affect any other of Australia's international treaties or obligations.

52. I have considered that the cancellation of the visa would result in mandatory legal consequences, including the first named review applicant's rights to apply for certain visas in the future and that she would become an unlawful citizen. There is no evidence before me that Ms Wang would be subject to indefinite detention as a consequence of the cancellation.
53. After considering all these matters, I give the most weight to the fact the first named review applicant Ms Wang provided incorrect information to obtain the grant of a visa to which she was not entitled. This fact outweighs all other considerations in the first named review applicant's favour.
54. The tribunal has decided that there was non-compliance by the first named review applicant in the way described in the notice given under s.107 of the Act. Further, having regard to all the relevant circumstances, as discussed above, the tribunal concludes that the visa should be cancelled.
- 55.
56. Mr Yue
57. There were no direct submissions made in relation to any discretionary considerations about whether the second named review applicant's visa should be cancelled. I have considered the representative's submissions, the written evidence provided by the applicants, the oral evidence of Ms Wang and the evidence of the second named review applicant at the hearing on 26 October 2017.
58. (a) *Correct information*: the correct information related to the first named review applicant's Ms Wang's relationship status. I am satisfied that the correct information in October 2012 years that Ms Wang was in a de facto relationship with Mr Yue, and that this information was known to Ms Wang at the time she recorded in her application for the visa that she had "*never married or been in a de facto relationship*".
59. (b) *Genuine document*: does not apply and I give this no weight.
60. (c) *Whether the decision to grant the visa was based wholly or partly on the incorrect information*: I am satisfied that Ms Wang would not have met the criteria in r.1.03 as a dependent child if the correct information that she was in a de facto relationship have been disclosed. I am satisfied that Ms Wang would not have been entitled to the grant of the visa if the correct information had been disclosed. I am satisfied that if Ms Wang was not entitled to the grant of visa, she would not have been granted the visa and therefore would never have been in a position to sponsor the second named review applicant for the visa which he was subsequently granted. For this reason the decision to grant the visa to the second named review applicant was based wholly or partly upon the incorrect information which led to the grant of the visa to the first named review applicant.
61. (d) *Circumstances of non-compliance*: There is no evidence before me that the second named review applicant was involved in the non-compliance, which was an answer recorded by the first named review applicant in her application for a visa in October 2012. The circumstances of the non-compliance involve an application for a visa by the first named review applicant, to which the second named review applicant is not a party. For this reason I give this some weight in the second named review applicant's favour.
62. (e) *Present circumstances*: Mr Yue stated that he and Ms Wang set up an import-export company. He stated that he is currently in China in charge of developing all clients and maintaining existing clients. He stated he has been in China for the past seven months. Mr Yue stated both his parents live in China. He stated he had lived in Australia since he was 16

years and completed his high school and university studies in Australia. Mr Yue stated Ms Wang is currently in Australia, and her mother who was injured in a car accident in 2013 and requires some care from her daughter is also in Australia. I have given the second named review applicant's Australian business connections some weight in his favour.

63. (f) *Subsequent behaviour*: there is no evidence of any issue in relation to the second named review applicant and his response or cooperation with the Department. I give this some weight in his favour.
64. (g) *Other non-compliance*: there is no evidence before me of any other instance of non-compliance by the second named review applicant. I give this some weight in his favour.
65. (h) *Time since non-compliance*: it is five years since the non-compliance by the first named review applicant. I have given the period of time, and the second named review applicant's relatively young age consideration and give these factors some weight in his favour.
66. (i) *Breaches of the law*: there is no evidence before me of any breaches of the law by the second named review applicant. I give this some weight in his favour.
67. (j) *Contribution to the community*: Mr Yue stated that his contribution to the community included the approximate \$1 million that had been spent on his tuition fees, payment of rent, purchase of a car and the fees for the application for his visa. I accept that the second named review applicant may have paid for the costs of living and education, but not satisfied that these are matters for which I should give much weight in assessing his contribution to the community in relation to the circumstances relevant to the possible cancellation of the visa. Mr Yue also stated his company would continue to contribute financially to the country and he would also continue to pay tax. I have given his past and potential financial contribution to the economy some consideration and give it a little but some weight in his favour.
68. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any case: *MIAC v Khadgi* (2010)190 FCR 248. The tribunal may also have regard to lawful government policy. The relevant policies set out in the Department's Procedural Advice Manual, 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.
69. I have considered the correct information and the fact that the second named review applicant would not have been entitled to the grant of the visa if the first named review applicant was unable to sponsor him. I have considered that it was only due to the incorrect information being provided by the first named review applicant that the first named review applicant was granted a visa, and consequently able to sponsor the second named review applicant. I place significant weight on the consequences of the incorrect information being provided to the Department by the first named review applicant. I have balanced this with consideration of the other circumstances that I am required to consider when determining whether the visa of the second named review applicant should be cancelled.
70. I have considered that the consequences of the cancellation may affect the ongoing import export business which was established by the first named and second named review applicants together. I have considered the evidence that the first named review applicant's mother has suffered some injuries in a car accident and may suffer some hardship as a result of not having either of the review applicants there to support her. I have not been provided with any medical evidence in relation to the support she requires from either of the review applicants.

71. There are no consequences that flow from the cancellation of Mr Yue's partner visa that result in the cancellation of any other visa based on the information before me.
72. I am not satisfied based on the information before me that the cancellation of the visa of the second named review applicant would affect Australia's international obligations.
73. I have considered that the cancellation of the second named review applicant's visa would result in mandatory legal consequences, including his right to apply for certain visas in the future.
74. After considering all the matters before me I give the most weight to the fact that the grant of the visa to the second named review applicant was obtained by sponsorship from the first named review applicant who was a person who was granted a visa based on the provision of incorrect information. This fact outweighs all other considerations in the second named review applicant's favour.
75. As stated above, the tribunal has decided that there was non-compliance by the first named review applicant in the way described in the notice under s.107 of the Act. Further, having regard to all the relevant circumstances, as discussed above the tribunal concludes that the visa of second named review applicant should be cancelled.
- 76.
- 77.

DECISION

78. The tribunal affirms the decision to cancel the first named applicant's Subclass 801 (Spouse) visa.
79. The tribunal affirms the decision to cancel the second named applicant's Subclass 820 (Partner) visa.
- 80.

Margie Bourke
Member

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

101 Visa applications to be correct

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given or provided.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
- (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:
 - (A) shows that there was compliance; and
 - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
 - (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and
 - (B) shows cause why the visa should not be cancelled; and
 - (c) stating that the Minister will consider cancelling the visa:

- (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.